

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE
3 AT NASHVILLE

4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

6 v.)

7 BRANDON DURELL HARDISON,)

8 Defendant.)

Case No.
3:17-cr-00124-3

9 - - - - -
10 BEFORE THE HONORABLE WAVERLY D. CRENSHAW, JR.
11 CHIEF DISTRICT JUDGE

12 TRANSCRIPT

13 OF

14 PROCEEDINGS

15 December 7, 2022

16 Sentencing Hearing
17 - - - - -

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20 APPEARANCES ON THE FOLLOWING PAGE

21
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I N D E X

Wednesday, December 7, 2022

INDEX OF WITNESSES

(None)

INDEX OF EXHIBITS

(None)

1 The above-styled cause came on to be heard on
2 December 7, 2022, before the Honorable Waverly D. Crenshaw,
3 Jr., Chief District Judge, when the following proceedings
4 were had, to-wit:

5 THE COURT: All right. Be seated.

6 All right. We're here on Case 17-124, *United*
7 *States of America v. Brandon Hardison*.

8 Counsel want to make your appearance.

9 MR. COLLINS: Good afternoon, Your Honor. Gerald
10 Collins behalf of the United States government.

11 MR. SCHRADER: Good afternoon, Your Honor. Ben
12 Schrader for the United States.

13 MR. EVANS: Good afternoon, Your Honor. Luke
14 Evans on behalf of Brandon Hardison.

15 MR. BRUNO: And Paul Bruno on behalf of Brandon
16 Hardison, Your Honor.

17 THE COURT: All right. So, Mr. Hardison, we're
18 here today because on November the 3rd you were found guilty
19 by a jury on Count One through Seven of the fourth
20 superseding indictment. On May the 18th the Court entered a
21 judgment of acquittal on Count Six.

22 So today we come for sentencing on Count One,
23 conspiracy to participate in racketeering activity. On this
24 count you face a term of not more than life imprisonment, a
25 \$250,000 fine, up to five years of supervised release.

1 Count Two, murder in aid of racketeering. On this
2 count you're subject to life imprisonment, a fine up to
3 \$250,000, and supervised release up to life.

4 Count Three, use, carry, brandish, and discharge
5 of a firearm resulting in death, in violation of 18 U.S.C.
6 924(j). On this count you can be -- you can be sentenced to
7 any term of years or life imprisonment, consecutive to any
8 other sentence, up to \$250,000 fine, and up to five years of
9 supervised release.

10 On Count Four, again, murder in aid of
11 racketeering, same -- you face up to life -- you face life
12 imprisonment, a fine of \$250,000, and up to five years of
13 supervised release.

14 Count Five, use, carry, and brandish, discharge,
15 again, a term of years or life imprisonment consecutive to
16 any other sentence, up to \$250,000 fine, and up to five years
17 of supervised release.

18 And then Count Seven, assault resulting in serious
19 bodily injury, not more than 20 years of imprisonment, up to
20 \$250,000 fine, and up to three years of supervised release.

21 Do you understand you could be -- Mr. Hardison,
22 you can be sentenced to the statutory maximums?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. In preparation for the
25 sentencing, I've reviewed all of the papers filed. Most

1 importantly, the November 3rd, 2022, presentence report.

2 Did you get a copy of that, Mr. Hardison?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And did you get a chance to review
5 that with your lawyers?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Did you ask them questions, to
8 the extent you had -- yeah. Pull that microphone up.

9 Did you ask them any questions about the
10 presentence report, to the extent you had any?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And then, with the -- with the
13 government's briefs that they have filed, did you also get a
14 chance to review those documents?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And talk to your lawyers about those
17 documents?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you want any more time to look at
20 any of those documents, the presentence report or anything
21 else?

22 THE DEFENDANT: I'm good.

23 THE COURT: And, to the extent you had questions,
24 did your lawyers give you answers that you understood?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you let them know if you wanted
2 them to -- if you wanted them to clarify any --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any complaints or
5 grievances about your lawyers' services to this point in
6 time?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right.

9 I understand the government has no objections to
10 the presentence report?

11 MR. COLLINS: That is correct, Your Honor. Thank
12 you.

13 THE COURT: Okay. Mr. Hardison has several
14 objections.

15 Do you want to add anything that's not in the
16 papers?

17 MR. EVANS: No, Your Honor. I don't have any
18 additional legal argument outside of what's been argued in
19 the pleadings.

20 THE COURT: All right.

21 Did you have any proof on any of these that you
22 wanted to present?

23 MR. EVANS: No proof, Your Honor.

24 THE COURT: All right. So we're ready for the
25 Court to rule? On the objections to the presentence report?

1 MR. EVANS: Yes, Your Honor.

2 THE COURT: All right. So the first objection,
3 Mr. Hardison objects to the offense conduct contained in
4 paragraphs 20 through 66, claiming that he's not guilty of
5 the crimes alleged. This objection is overruled because the
6 jury has ruled and spoken.

7 Second, Mr. Hardison objects to the sentencing he
8 will receive on Counts Three and Five being consecutive to
9 all other counts. Those convictions were for violation of 21
10 U.S.C. Section 924(j). That provides that a person in the
11 course of a violation of subsection (c) causes the death of a
12 person through the use of firearm -- a person who, in the
13 course of violation of subsection (c), causes the death of a
14 person through the use of firearm shall, if the killing is
15 murder, be punished by death or by imprisonment for any term
16 of years or for life. And, if the killing is manslaughter,
17 be punished as provided in that section.

18 As the -- as the defendant and the parties
19 recognize, the Sixth Circuit has yet to address the issue of
20 whether a 924(j) count is to run consecutively to other
21 sentences imposed. Those circuits that have addressed the
22 issue are split. The Second Circuit ruling, consecutive term
23 of imprisonment is required. The Third Circuit and the
24 Fourth Circuit, as well as the Eighth Circuit and the
25 Eleventh Circuit also say consecutive term of imprisonment is

1 not required.

2 In *United States v. Wallace*, the Sixth Circuit
3 recognized the split and found it need not resolve the
4 question here because the record made clear that the district
5 court would impose the same sentence regardless of its
6 purported error.

7 Likewise, here, the Court believes it need not
8 weigh into this issue because it has no effect on the total
9 offense level nor the mandatory life sentence on Counts Two
10 and Four.

11 Third, Mr. Hardison objects to the two-level
12 enhancement under Sentencing Guideline 3B1.1(c), which
13 provides that, based on the defendant's role in the offense,
14 increase the offense level as follows: If the defendant was
15 an organizer or leader of a criminal activity that involved
16 five or more participants or was otherwise extensive,
17 increase by four levels. If the defendant was a manager or
18 supervisor and the criminal activity involved five or more
19 participants, increase by three levels. Or if the defendant
20 was an organizer, leader, manager, or supervisor in any
21 criminal activity other than what was described in (a) and
22 (b), increase by two levels.

23 The commentary goes on to provide (as read):

24 To qualify for an adjustment under this section
25 the defendant must have been the organizer,

1 leader, manager, or supervisor of one or more of
2 the participants.

3 Here, the two-level enhancement was properly
4 assessed, as Mr. Hardison was for a time the chief of
5 security, and that necessarily involved managing or
6 supervising others. He was also a member of the blackout
7 squad.

8 Regardless, given that the offense level tops out
9 at 43, a two-level reduction would have no effect on the
10 guideline range, nor would it affect the mandatory life
11 sentence.

12 Fourth, Mr. Hardison takes issue with
13 Section 2A1.1, attempted murder guideline, which carries a
14 base level -- a base offense level of 30 in relation to the
15 shooting of Antonio McGougan's residence. Instead, he
16 submits that Section 2A1.1 guideline calling for a base
17 offense level of 14 should have been used because it was an
18 aggravated assault, not an attempted murder.

19 At trial, the proof showed that on September 26th,
20 2012, Trotter, Lucas, Burks, Hardison, Zachary, Hendrix, and
21 other Gangster Disciple members planned a drive-by shooting
22 of a residence on Richardson Street in Clarksville,
23 Tennessee, where Antonio McGougan, a Bloods member, resided
24 with his parents. The shooting was to be a retaliation for
25 the murder of Shannon Fairley, a Gangster Disciple member.

1 Armed with multiple firearms, including assault
2 rifles, the group traveled to the residence in separate
3 vehicles, with one being a blocker car and the other being a
4 shooter car. Trotter and Hardison were in the shooter car.

5 Upon arrival at the residence, several people were
6 milling about in front. Nevertheless, Trotter and Hardison
7 opened fire. After several shots were fired, the vehicles
8 fled the area upon hearing police sirens. Ultimately, a
9 high-speed chase ensued and crossed into Kentucky.

10 The facts presented here are similar to those in
11 *United States v. Mays*, 285 F.App. 269, 273, Sixth Circuit,
12 2008, where an attempted murder guideline was found to apply.
13 There, members of the Outlaws motorcycle gang participated in
14 a drive-by shooting at the clubhouse of the Iron Horsemen, a
15 rival motorcycle gang. The evidence at trial showed that
16 Outlaw gang members decided to go to the Iron Horsemen
17 clubhouse to let them know we was around, quote-unquote, and
18 to, quote, light the place up.

19 Like here, the evidence shows that gang members
20 decided to go to a rival's in a show of force with a getaway
21 plan in advance. See *United States v. Wilson*, 992 F.2d 156
22 at 158, Eighth Circuit, 1993, affirming the application of
23 Section 2A1.1(a)(1), where defendant fired a shotgun out of a
24 passenger window toward a group of people. Even though the
25 shotgun blast hit no one, this objection is overruled because

1 the brazen shooting was not simply an attempted assault.

2 Fifth, Mr. Hardison takes issue with applying
3 Guideline 2A1.5, conspiracy of solicitation or solicitation
4 to commit murder, to the abandoned Plush Nightclub shooting.
5 He argues that the facts relied upon in the presentence
6 report state that Defendant, along with other Gangster
7 Disciples, planned a shooting at the Plush Nightclub, but
8 these facts fail to sufficiently establish the existence of a
9 conspiracy or that the object of the alleged conspiracy was
10 to kill; therefore, 2A1.5 is not applicable.

11 Does the government plan any proof on this issue?

12 MR. COLLINS: Your Honor, no further proof in
13 terms of witnesses. However, may I approach the --

14 THE COURT: Sure.

15 MR. COLLINS: Your Honor, I think the Court,
16 though -- well, first of all, I think the government at trial
17 has put on evidence that this was a planned retaliation
18 shooting. Similar to --

19 THE COURT: So that's my question. What does the
20 government believe that evidence is? Of an actual plan?

21 MR. COLLINS: So, Your Honor, there's been
22 testimony that the Court has heard specifically at trial
23 from -- we would point to Mr. Warfield, testimony that the
24 Court has even heard a little bit of again today where
25 members of the Gangster Disciples wanted to plan this

1 retaliatory shooting, that there was an agreement amongst
2 them to do so, and that Mr. Warfield in particular went out
3 to this location to scout the location, to make sure that it
4 was a location that was -- a place where they could carry out
5 the act at that point in time.

6 And it was -- as you've heard multiple times, it
7 was Mr. Warfield who then came back to the group, having made
8 the decision not to go forward. However, prior to him
9 leaving that -- that location where they met and discussed
10 the plan, the group had agreed that this attack should take
11 place at Plush Nightclub, Your Honor.

12 THE COURT: Okay. Let me hear from Mr. -- the
13 defendant.

14 MR. EVANS: Your Honor --

15 THE COURT: And you're a bit at a -- you didn't
16 get to hear what Mr. Warfield shared earlier.

17 MR. EVANS: And that's correct, Your Honor. I was
18 not here for that portion.

19 (Overlapping speech.)

20 MR. EVANS: Your Honor, I would say this: If the
21 government felt that the facts in the PSR were insufficient
22 to support the enhancement, they could have objected and they
23 could have asked that those facts be added with specific
24 references to the trial testimony and/or presented
25 Mr. Warfield for this hearing today to put forward whatever

1 information that they're claiming that he provided specific
2 to the Plush Nightclub. He testified, I guess, earlier this
3 morning. They didn't do that.

4 The problem is that, even by the statements made
5 by the government, is they planned a shooting. And
6 specifically -- and I lay this out -- across Objection 4 and
7 5, it requires more than just the plan to commit a shooting;
8 it requires a plan to commit a violation of Section 111 -- or
9 1111, rather, and that has to be the object of the
10 conspiracy.

11 And there is insufficient proof before the Court
12 or information before the Court for purposes of sentencing to
13 substantiate that -- that enhancement, because just merely
14 going to -- a plan to go commit a shooting that didn't come
15 to fruition doesn't rise to that level, Your Honor.

16 So the --

17 THE COURT: So I guess -- well, looks like the
18 evidence could be interpreted two different ways. One, given
19 that they had planned this one that I just referenced
20 earlier, the McGougan, it suggests they could have planned
21 this one as well at Plush. So that shows that this group was
22 able to do it.

23 On the other hand, though -- and you don't --
24 you're are at a disadvantage -- Mr. Warfield testified that,
25 yeah, he went out and looked the place over, and he came --

1 he came to the unilateral -- he came to the decision and
2 unilaterally decided, no, we shouldn't do this. And that
3 would suggest it wasn't, because he made the decision without
4 consulting with anyone. If there was a conspiracy, it wasn't
5 much of a conspiracy, because he decided on his own, after he
6 saw the -- who was at the Plush Nightclub, we shouldn't do
7 this. And he lied. He then went back and lied to the others
8 so they wouldn't do it. And that doesn't -- that doesn't
9 sound like a conspiracy.

10 MR. EVANS: Yes, Your Honor.

11 And my recollection of the trial testimony -- and
12 it may have been from Mr. Warfield or someone else -- was
13 exactly as Your Honor has suggested there, which was -- it's
14 consistent. He -- someone unilaterally decided they didn't
15 want to do it because they just didn't want to do it.

16 THE COURT: And that's what Mr. Warfield said. He
17 was that "some person."

18 MR. EVANS: And that he admitted that he made it
19 up -- my recollection, which could be erroneous on that --
20 was that I don't even know that he went by the nightclub;
21 that he just drove out that way and decided he didn't want --
22 if I'm remembering trial testimony -- and forgive me if I'm
23 wrong -- but he didn't even make it all the way there and
24 just decided he didn't want to do it.

25 But that's not a conspiracy, as Your Honor's

1 indicated, especially a conspiracy to commit murder under
2 federal statute.

3 THE COURT: All right. Let's give the government
4 the last word, then I'll rule.

5 MR. COLLINS: And thank you, Your Honor.

6 And, just so the record's clear, Your Honor, the
7 government has put forth evidence on this at least two times,
8 Your Honor.

9 First, looking at the testimony of Mr. Warfield at
10 trial -- and the transcript is under Document Number 2062.
11 On page --

12 THE COURT: Hold on. Let me pull up my notes.
13 I've been using them quite a bit here. Go ahead.

14 MR. COLLINS: So looking at Document Number 2062,
15 page 59, starting at line 3, there was an extensive amount of
16 discussion before the Court where Mr. Warfield talked about
17 Mr. Fairley and how he had been killed and how the Gangster
18 Disciples held the Bloods responsible for this, and that he
19 went through a discussion on why -- Mr. Fairley's
20 relationship to the Gangster Disciples, why he was removed
21 from the organization.

22 And then, from that, that led into a discussion on
23 page 60 at page 9 [sic] about the Plush Nightclub incident,
24 and this was described as a location where the Bloods hung
25 out.

1 Now, in the days following Mr. Fairley's death,
2 that the Gangster Disciples discussed the possibility of
3 targeting Plush because that was a location in which the
4 Bloods hung out. And then Mr. Warfield talked about at
5 length how they came up with the idea to target the location,
6 that they wanted to go by there and see if they could catch
7 some of the gang members there.

8 And he specifically said, "And, yeah, like, we was
9 planning to do that that day, and we were talking about it.
10 I was sent to scope out the location."

11 He then talks about -- "I was sent out to go scope
12 out the place and see it -- see was any Bloods out there and
13 see was it -- did I think it was a good idea to go out there
14 at that point and period of time." And that's on page 61,
15 starting at line number 2.

16 That he identified individuals who were involved,
17 to include the defendant, who was part of the planning; that
18 Mr. Dowlen was part of the planning; that Mr. Lucas was part
19 of the planning; and that there were potentially others that
20 he didn't recall.

21 And that -- not only did they discuss the shooting
22 and that he would be the person who would scout the location,
23 but that there were guns involved and that individuals had
24 different types of guns that were present; that he had
25 handguns. He didn't remember specifically if there were big

1 guns that were involved. But that there were guns involved
2 that -- that people -- that people had on them during this
3 discussion.

4 And that he specifically then, based on this
5 agreement by the group, the individuals that he described
6 were present, he then was sent out from the location to go
7 scout the location. And, while on the way to the location,
8 he did decide that he did not want to go forward.

9 However, when he left the meeting, there was an
10 agreement by everybody at that location that this would take
11 place, and that's why he was sent out as the scout.

12 THE COURT: According to Mr. Warfield.

13 MR. COLLINS: According to Mr. Warfield.

14 THE COURT: Anybody else corroborate that?

15 MR. COLLINS: So, Your Honor, Mr. Dowlen also
16 testified to this as well.

17 THE COURT: Anybody other than Mr. Dowlen?

18 MR. COLLINS: Your Honor, those are the two
19 individuals that I have.

20 THE COURT: Okay.

21 MR. COLLINS: Based on my recollection. If the
22 Court gives me one quick moment, let me just double-check.

23 THE COURT: Okay.

24 MR. COLLINS: Okay. And, Your Honor, no, it
25 doesn't sound like anyone -- well, no one else in the

1 Hardison specific trial testified to it.

2 Mr. Dowlen, like I said, did testify to it -- and
3 just for the record, Your Honor, that is captured in Document
4 1474, starting on page 44, at line number 1, where Mr. Dowlen
5 talks about -- about them targeting Plush.

6 The same thing: There was conversations about how
7 this would take place; that Mr. Lucas and Warfield arrived at
8 Mr. Hardison's house with a couple of assault rifles; they
9 went through, trying to figure out what was going to -- what
10 they were going to do and how they were going to handle it in
11 terms of who was going to have specific roles in carrying out
12 the shooting.

13 He also talks about Mr. Warfield also being sent
14 out to scout the location as well.

15 So that's the evidence that the government has,
16 Your Honor. And I would submit on that.

17 THE COURT: Okay. So I'm going to find based on
18 the recitation of what came out at trial, as well as what I
19 heard from Mr. Warfield over the past couple of days, that,
20 on this particular issue, I'm going find that -- the evidence
21 equal on both sides. So it hasn't been established by
22 preponderance.

23 My primary -- I have several concerns. One, even
24 if I went with what Mr. Warfield said, I have a hard time
25 squaring his unilateral decision to not proceed with the

1 invasion. And then he testified that was -- he told them
2 something that wasn't true in getting them not to do it. So
3 no invasion of the Plush Nightclub ever occurred. Because he
4 was -- because he made that unilateral decision, which was
5 apparently followed, I have a hard time coming by
6 preponderance of the evidence that, you know, the essence of
7 a conspiracy was here by agreement. Especially if others, as
8 he claimed, were involved in it.

9 Then we go to Mr. Dowlen's testimony. I'll say
10 this with Mr. Dowlen: Some of the things that Mr. Dowlen
11 says are truthful, and some of the things that Mr. Dowlen
12 says challenge truthfulness.

13 And for those reasons, I just find it hasn't been
14 established by a preponderance; so I'll sustain that.

15 Then we go to the sixth issue raised by
16 Mr. Hardison, objects to the enhancement under 3B1.1 for
17 being a leader or organizer of a criminal activity in
18 relation to the shooting at C-Ray's.

19 I guess let me hear from the government on that.
20 I do recollect that Mr. Hardison called Darden, and Darden
21 issued the famous quote, "All hands on deck." But that
22 doesn't -- that doesn't help me conclude that Mr. Hardison
23 was a leader or organizer for C-Ray's. Mr. Darden sent the
24 message out, "All hands on deck."

25 MR. COLLINS: The Court's brief indulgence, Your

1 Honor.

2 So, Your Honor, it's -- the government believes
3 that at trial we put forth evidence and we proved that it was
4 Mr. Hardison who was initially attacked at Sidelines

5 THE COURT: Uh-huh.

6 MR. COLLINS: And, based on this attack, he put
7 out a call to the other Gangster Disciples, to include Mr. --
8 to Mr. Darden and the Gangster Disciples so that they could
9 assemble and then retaliate against Bloods members, either at
10 that location and/or where they found them.

11 And so it's the government's position -- this has
12 always been the government's position -- that Mr. Hardison
13 was the --

14 THE COURT: Remind me what proof -- because I
15 agree with you -- everything you said to that point. But
16 then the critical thing is Hardison called Darden and Darden,
17 who we know was the head of all Tennessee, sends the
18 message -- and -- "All hands on deck." And we have further
19 testimony that people reacted to that, "people" being
20 Gangster Disciples. And even testimony, "I dropped what I
21 was doing because 'all hands on deck' means all hands on
22 deck," which came from Darden.

23 MR. COLLINS: And the Court's brief indulgence,
24 Your Honor. Let me pull the exact location of the testimony.

25 THE COURT: And I guess by that time, as well,

1 Mr. Hardison's role would have been on the blackout squad, I
2 think. So he would have been under Mr. Darden, hence why he
3 probably called Darden to say -- to report what happened. So
4 Mr. Darden ends up making the decision all hands on deck.

5 MR. COLLINS: And, Your Honor, it's the
6 government's recollection, Your Honor -- and I'm trying to
7 identify it specifically in the testimony. The Court's
8 indulgence. But it's the government's recollection as well
9 that -- that the defendant at that point in time also was a
10 part of the security team.

11 THE COURT: Right.

12 MR. COLLINS: And that in and of itself would have
13 then empowered him to be able to have other individuals --

14 THE COURT: Then why wouldn't he have called and
15 said, "All hands on deck"? Why did he have to call Darden if
16 he's so powerful?

17 MR. COLLINS: Well, Your Honor, I think there's
18 still a chain of command as it relates to this organization
19 and the structure. And so I think, if you look at the facts
20 as it relates to the Main Street murders, the defendant had
21 already learned, I think, by that point -- by the time that
22 this incident occurred that you couldn't just unilaterally
23 make decisions without people knowing.

24 THE COURT: He was a manager, but he wasn't a
25 leader. He had to go up the chain of command.

1 MR. COLLINS: Well, I think, Your Honor, that he
2 has the ability as a manager to organize people and to have
3 those people --

4 THE COURT: Okay.

5 MR. COLLINS: -- respond and take part in
6 activities. But, at the same time, it's still within an
7 organizational structure where he has to notify people.

8 Especially in a situation where -- we've heard
9 many times throughout this trial, Your Honor, that there were
10 instances where they wanted to do retaliations but they had
11 to be careful of the heat that was going to be on them. And
12 during this window of time, there was a lot of attention on
13 them. So it would make sense that, even as a manager, he
14 would still then talk to Darden before executing a plan like
15 this unilaterally.

16 THE COURT: So it sounds like we agree, he wasn't
17 a leader or organizer? He was at best maybe a manager?

18 MR. COLLINS: Well, Your Honor, I think -- look, I
19 think that, based off of the facts that we know through the
20 evidence, once he -- once the Gangster Disciples got to that
21 location, he was part of the discussion on how this was going
22 to play out. And he was part of the discussion --

23 THE COURT: Once they got to C-Ray's?

24 MR. COLLINS: That's correct, Your Honor.

25 THE COURT: Okay.

1 MR. COLLINS: Well, let me back up, Your Honor.
2 Once the Gangster Disciples assembled, first at Sidelines and
3 at C-Ray's as well, Your Honor, he was part of the
4 decision-making process on how this whole thing was going to
5 play out. And so, Your Honor, the government believes that
6 the evidence does show that he was a leader and a -- a
7 manager and a leader in this situation, Your Honor, and that
8 the enhancement should apply.

9 THE COURT: All right. So I'm going to sustain
10 that objection on the leader or organizer for the reasons we
11 just discussed.

12 So, with that, I'll accept the facts in the
13 presentence report, and we'll go to the guideline
14 calculation, which is, first, on Count One, conspiracy to
15 participate in racketeering, the guideline for conspiracy to
16 participate in racketeering provides a base offense of 19,
17 but also provides that if the offense level is greater for
18 the underlying criminal activity, such as it is in this case,
19 then that controls.

20 For the guideline purposes and the racketeering
21 activities alleged in Count One, Mr. Hardison is responsible
22 for, one, the murder of Derek Sherden; two, the murder of
23 Amanda Weyand; three, the attempted murder of Antonio
24 McGougan; four, the conspiracy to commit murder because these
25 involved separate victims and they cannot be grouped.

1 Number one, murder of Derek Sherden, Count Two,
2 the base offense level is 43 for first-degree murder. Two
3 points are added for obstruction of justice because
4 Mr. Hardison instructed Trotter to get rid of the firearms.
5 And Mr. Hardison attempted to persuade his cellmate, John
6 Duffey, to claim that the murder was committed by Trotter.
7 That gives an adjusted offense level of 45.

8 Number two, murder of Amanda Weyand, Count Four,
9 base offense level starts at 43 for first-degree murder. Two
10 points are added for obstruction for the same reasons. So we
11 get another adjusted offense level on number -- on the murder
12 of Amanda Weyand at 45.

13 Then, three, attempted murder of Antonio McGougan.
14 Base level starts at 33 for attempted murder. There are no
15 adjustments. So the final for the adjusted offense level is
16 33.

17 And then the underlying racketeering activity,
18 Number 4, the murder -- the conspiracy to commit murder,
19 gives a -- at Plush Nightclub is 33 under the guideline for
20 conspiracy to commit murder. There are no adjustments there,
21 so the adjusted offense level is 33.

22 Then we turn to the multicount adjustment under
23 the guideline. Count Two receives one unit; Count Four
24 receives one unit; and the attempted murder of McGougan and
25 the conspiracy to commit murder receives zero units. So

1 there's a total number of units. The combined adjusted
2 offense level for racketeering is then 45 plus 2, for 47.

3 So, Count One, base offense level is 47.

4 MR. COLLINS: And I'm sorry, Your Honor. I'm
5 sorry, Your Honor. And I noticed in your calculation you
6 included the conspiracy at Plush, even though I thought just
7 now you just sustained it. And I thought you were still
8 including it as. . .

9 THE COURT: Well, I did, but it has no effect on
10 the guideline.

11 MR. COLLINS: Okay. I just wanted to make sure.

12 THE COURT: It has no effect on the guideline.

13 MR. COLLINS: Thank you, Your Honor.

14 THE COURT: Count Two, murder in aid of
15 racketeering, Derek Sherden, the base level is 43 for murder
16 in aid of racketeering and provide -- 43 provides that the
17 level is -- is greater than the underlying activity, or 12.
18 So 2 points are added for obstruction for the same reasons:
19 He instructed Trotter to get rid of the firearm and attempted
20 to persuade his cellmate, John Duffey, to claim the murder
21 was committed by Trotter. So the adjusted offense level
22 there is 43 plus 2, which is 45.

23 Then Count Four, murder in aid of racketeering,
24 Amanda Weyand. Again, 43 for the murder in aid of
25 racketeering, plus 2 for the obstruction, which is an

1 adjusted offense level of 45.

2 Then Count Seven, racketeering and assault
3 resulting in bodily injury for Malcolm Wright. Base level
4 for 14 for aggravated assault. Five points because a firearm
5 was discharged. Seven because the victim sustained permanent
6 or life-threatening, but only 10 points are allowed to be
7 added to the base level. So that brings him to 24. Plus 4
8 points for being the leader -- I sustained that, so the
9 adjusted offense level is 24.

10 The adjusted offense level for all counts is 43.
11 While 47 is the total offense level because Count One is the
12 highest, the guideline makes 43 the ceiling or the top. So I
13 can only do 43 points for the offense level.

14 In addition to the foregoing, there's the
15 mandatory minimum term on both Counts Three and Count Five
16 that must be served consecutive to any other sentences.

17 Turning to criminal history, there are 3 points
18 for a 2005 conviction for the sale of controlled substance
19 out of the Davidson County Criminal Court and 1 point for a
20 conviction for aggravated robbery in the Davidson County
21 Court, which gives him 4 points and sets him at Category III.

22 So the total offense level of 43 on Counts One,
23 Two, and Three and a criminal history of III results in a
24 sentencing range of life imprisonment. In addition, Counts
25 Three and Five each call for a consecutive sentence of 120

1 months. Probation is not authorized under the guideline.
2 The guideline range for supervised release is up to five
3 years. The guideline range for a fine is up to 500,000.
4 There's a special assessment of \$100 per count, which is
5 mandatory.

6 Does the government have any objections to the
7 guideline range? Other than those noted?

8 MR. COLLINS: No, Your Honor. Thank you.

9 THE COURT: Mr. Evans?

10 MR. EVANS: Your Honor, yes, as noted --

11 THE COURT: Other than those noted.

12 MR. EVANS: Not other than that.

13 THE COURT: So I understand there's some victim
14 impact witnesses?

15 MR. COLLINS: Yes, that is correct, Your Honor.
16 What I would like to do, Your Honor, if possible, is call
17 them in groups related to each victim, if that's fine with
18 the Court.

19 THE COURT: And I'll remind everyone who is about
20 to speak, your comments are directed to me.

21 MR. COLLINS: The Court's indulgence. So, Your
22 Honor, the first person will be Ms. Johnicia Heard, who is
23 the sister of Mr. Derek Sherden.

24 MS. J. HEARD: Good afternoon, everyone.

25 THE COURT: How are you?

1 MS. J. HEARD: I'm okay. I'm a little nervous.

2 THE COURT: Okay. Just direct your comments to
3 me. Don't worry about anybody else.

4 MS. J. HEARD: I know. Thank you.

5 Sorry. I'm really nervous. I had a lot to say,
6 but now it's just all went away.

7 But Derek was my little brother. And I loved him.
8 I miss him. He was a big teddy bear. He -- I don't know
9 what else to say. I'm sorry.

10 THE COURT: I appreciate you being here.

11 MS. J. HEARD: Okay. Thank you.

12 MR. COLLINS: Your Honor, next would be
13 Mr. Sherden's sister, Katina Heard.

14 THE COURT: How are you?

15 MS. K. HEARD: Hey. How you doing?

16 THE COURT: Okay. Thank you.

17 MS. K. HEARD: Honestly, Your Honor, I'm going to
18 be honest with you, this is a hard pill to swallow. I feel
19 like I lost my best friend. My daughter calling me all night
20 crying, because my brother was a father figure. And I'd give
21 anything to have him back. I don't see no family deserve to
22 go -- I'm sorry. I'm sorry.

23 THE COURT: That's all right. Take your time.

24 MS. K. HEARD: I don't see no family deserve to go
25 through this. My life has been hard, Your Honor.

1 (Indiscernible.) My life ain't the same. Me and my brother
2 was close. He was my best friend. We talked every day. And
3 just the thought of him being gone, Your Honor, I just want
4 justice for my brother. Because he deserve it. He loved --
5 he had a son that he'll never get to know his father, and I
6 just want to be able to sleep tonight.

7 And my daughter wanted me to say some words. She
8 says she want justice for her uncle because that's -- because
9 he was her father figure and she loved him and she miss him,
10 and it's hard for her to live. It's hard for all of us to
11 live, me and my siblings.

12 I said I wasn't going to cry when I got up here,
13 but I can't help it. I've been to every trial, Your Honor,
14 and I just want justice for my brother. I'm going to be
15 honest. It's not fair my brother not sitting over there in
16 one of those chairs. I can't hug him. I can't talk to him.
17 I can't never be with him.

18 So, on behalf of me and my daughter and my family,
19 I just want justice for my brother.

20 THE COURT: Thank you for being here and sharing
21 that.

22 MS. K. HEARD: Thank you, Your Honor.

23 THE COURT: Thank you very much.

24 MR. COLLINS: And then, Your Honor, two of the
25 Heard siblings provided statements that they ask that the

1 government read to the Court.

2 THE COURT: All right.

3 MR. COLLINS: And so, Your Honor, the first
4 statement is from John Parker, who has been identified as
5 Mr. Sherden's brother. He wanted to just simply relate to
6 the Court that no one deserves what happened to Derek and
7 Amanda. That he personally believes that the maximum
8 sentence possible is appropriate. And he wanted to thank
9 everyone for their consideration for his words.

10 THE COURT: All right.

11 MR. COLLINS: And then, Your Honor, the second
12 statement is from Katrina Heard. And that's -- so you just
13 heard from Katina. Katrina with an "r." And she prepared a
14 statement and it reads as follows (as read):

15 First and foremost, I would like to thank God
16 for this day. It's finally here. My life was
17 scattered twice January 6th. I lost my last son
18 John January -- I lost my last son January 6th,
19 2005. January 6th, 2012, was the last time I
20 heard my baby brother's voice. We talked the
21 whole day. He helped keep my spirits up from
22 being sad about my son. Sadly, my brother's life
23 was taken that same night seven years later. We
24 last talked around 10:15 p.m. I made him laugh.
25 And to know he was found dead around 10:30 p.m., I

1 couldn't believe this and always wondered why.

2 My life hasn't been the same since that night.
3 I sometimes find myself depressed and crying,
4 missing him so much. I have to face reality,
5 knowing I'll never see him again.

6 Baby brother, your sisters, your brother, your
7 nieces and nephews miss you so much. Our hearts
8 will be forever broken. We love you, Derek.

9 And for you, Mr. Hardison, I would like to let
10 you know I forgave you the same night, not knowing
11 who had did this. All because I have God to
12 answer to, and so do you. I miss my brother
13 beyond what you could think. One thing I do know,
14 Derek trusted you to let you in his home, and you
15 betrayed him by taking his life.

16 My brother wasn't a bad guy at all. He just
17 made some bad decisions, like we all have at one
18 point in time in our life. I hurt daily. My kids
19 hurt. My family hurts. You took a big part of
20 our hearts that night. I'm crying as I write this
21 all. I can see -- I'm crying. As I write this,
22 all I can see is the photos of him dead on the
23 couch.

24 I watch you in court have no remorse at all for
25 you what you did. I really hope you find God

1 because you will definitely need him. Derek is
2 gone and resting with the angels in heaven. You
3 are about to live in pure hell for what you did to
4 my family and the other families. I will never
5 hate you, but I will pray for you because you're
6 pure evil.

7 I want the Courts to know my brother was loved
8 and was a gentle giant with a big heart. Derek
9 and Amanda didn't deserve their life to be cut
10 short by murder. He was only 23, with a full life
11 ahead.

12 I would like to thank Mr. Hernandez and all of
13 the other attorneys for a good job well done. I
14 appreciate all of them from the bottom of my
15 heart. Without them, this day would not be
16 possible.

17 Judge, I would like to see Mr. Hardison get the
18 supermax sentence in this case. A life sentence
19 for each life that was taken by his hands.

20 Thank you for allowing me to express myself.

21 Signed, Katrina Heard.

22 THE COURT: All right.

23 MR. COLLINS: And, Your Honor, at this time, the
24 government would like to call family members and friends who
25 are associated with Amanda Weyand, first starting with her

1 mother, Ms. Marilyn Smith.

2 THE COURT: If there are others, you can come
3 forward, too.

4 MR. COLLINS: Ms. Moore, do you want to come up,
5 too?

6 So, Your Honor, Marilyn Smith first, and then
7 Ms. Nancy Moore.

8 MS. SMITH: Hi.

9 THE COURT: Okay, go ahead.

10 MS. SMITH: My family and I have waited a long
11 time for this day to come. I am glad you were stopped from
12 killing any more. You took from my family, Amanda's kids'
13 mother, my only child, whom you did not even know. Amanda
14 would have given her last dollar to you if you needed it.

15 Amanda was a Christian who loved her children, who
16 got messed up with thugs who didn't care who they hurt as
17 long as they were in power, controlling with greed.

18 I am still struggling not to hate you. You see
19 what you did? The Bible says a person has to forgive in
20 order to be in heaven. And I believe that's true. And I
21 believe that is true, so I have to let my feelings of hate,
22 sadness go away before I die.

23 It's like a part of my heart has been ripped out
24 of my chest. What gives you the right to be a Muslim when
25 you would still hate and so many young lives hurt? They were

1 ages two, five, nine and 16.

2 A lot has happened to me since you took my
3 daughter's life. Amanda's dad, his only daughter, died of a
4 massive heart attack a year later after her death, leaving
5 the kids without a grandpa because he loved her so and had
6 been a paraplegic since his daughter was three.

7 Three of Amanda's kids are without a dad.

8 My mother, sister, two brothers has died, all who
9 would have laid down their life for Amanda.

10 I have asked for the death penalty. So I'm now
11 hope you get life in prison and no parole and not have a
12 peaceful memory.

13 Thank you.

14 THE COURT: You're welcome.

15 Ms. Johnson.

16 MS. JOHNSON: Your Honor, this is my sister.

17 Amanda was my niece. We come from a big family, four
18 brothers, four girls. Amanda was the baby of our family.
19 She was precious. She had made bad choices. But she didn't
20 get to see any of her children graduate. She didn't get to
21 meet any of her grandchildren.

22 And what gives a person a right to take a life?
23 There is no reason. There is no reason.

24 At Christmastime, I went and picked up Amanda at
25 the house where they were killed and took her to our family's

1 Christmas dinner. I loved her so much. And then, when I
2 took her back home, I said, "Amanda, you need to come home."

3 And she said, "Nan, I pray about it every day.
4 I'm going to come home."

5 Well, he never gave her the chance to come home.
6 I hope he thinks about this every day of his life. I hope he
7 does. I hope it hurts him. Someday in his life, I hope it
8 hurts him for the lives he's taken from all of us. And I do
9 want justice for Amanda.

10 Thank you.

11 THE COURT: Thank you very much.

12 All right.

13 MR. COLLINS: And then, Your Honor, the government
14 would call Ms. Vicki Davis.

15 MS. DAVIS: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MS. DAVIS: Again, my name is Vicki Davis, and I
18 am the mother of Malcolm Wright. I submitted my impact
19 statement to this courtroom several times. But let me give
20 you a quick glimpse of Malcolm's background and upbringing.

21 Malcolm is -- Malcolm is what you will call a
22 military brat. He was raised in the Army because I served 22
23 years of active service. We moved every two years from state
24 to state to country to country. Even with all the moving,
25 Malcolm was brilliant, kind, and good natured. It seemed he

1 could talk to anyone about anything. He was the glue to our
2 family.

3 In high school, he was a straight-A student,
4 started college after high school. We are a happy family,
5 very close and outgoing. We love watching sports. We are
6 Georgia fans. He was his siblings' best friend, an essential
7 life support system for his sister and brother.

8 On an early Saturday morning, at exactly 5:58 in
9 the morning on November 3rd, 2012, my doorbell rang. I went
10 to the door and looked through the side windows of the door.
11 It was a tall white man. He introduced himself as Detective
12 Finley. He asked to come in.

13 As my heart was racing, I opened up the door, and
14 he said, "Your son Malcolm was shot and didn't make it."

15 I immediately fell to the floor. Since that day,
16 I've had a broken heart syndrome.

17 Let me explain the magnitude the murder of my son
18 Malcolm has had on me and my family. Malcolm's death is the
19 worst trauma I have ever experienced. The trauma I
20 experienced in the Army at war does not even compare. This
21 trauma is more intense. The memories and hopes will always
22 be. Malcolm's death has been a range of different and
23 ongoing challenges for me and my family. The psychological,
24 biological, and social effects it's cost us all. Malcolm's
25 death has caused me physical symptoms, including stomach

1 ulcers, pain, muscle cramps, migraines, in and out of mental
2 institutions, because I cannot comprehend that someone would
3 take my son's life.

4 My pride in fighting for this country is gone. I
5 have lost the war when I lost my son Malcolm to gun violence.

6 The stress it puts on my family is enormous.
7 Empty chair, room, space. Never gets any less empty. I miss
8 my son every day of my life. He now has three nieces and
9 four nephews. They will never get to know their Uncle
10 Malcolm.

11 It's taken a huge toll on the trust I have in
12 others and in our country. This country that I sacrificed my
13 life for was all for nothing, and all the suffering
14 transferred to those close to me.

15 Malcolm's sister and brother are not here today
16 because this day is too emotional and draining, and I wanted
17 to protect them from this pain that no one should go through.

18 Everyday questions such as "How many kids do you
19 have" can trigger intense distress. I have nightmares all
20 the time of my doorbell ringing, and it's Detective Finley
21 telling me my son was shot and killed. The sound of
22 doorbells gives me anxiety.

23 You took so much from us. Every day we wake up,
24 we are reminded that Malcolm is not here. My everyday life
25 is a struggle because of the way my son was taken from us.

1 There can be no closure for us today. We will always
2 continue to think of Malcolm every waking moment.

3 Please, Your Honor, I ask that you fully punish
4 the defendant to the max. He has destroyed so many families
5 here today. People must be responsible for their own actions
6 if we are to keep the scale of justice balanced.

7 Hardison, I hope that and pray one day you face
8 reality and you confess that you have committed these crimes
9 and ask for forgiveness. I forgive you. I have no hate in
10 my heart for you. I have peace today.

11 Thank you, Your Honor.

12 THE COURT: All right. Thank you for being here.

13 MS. DAVIS: This is my husband, Charles Davis,
14 standing next to me.

15 MR. COLLINS: And, Your Honor, that would be all
16 of the family members.

17 THE COURT: All right.

18 So does the government want to be heard before
19 sentence is imposed?

20 MR. COLLINS: Yes, Your Honor. Briefly.

21 And thank you, Your Honor. I know the Court has
22 had an opportunity to review the sentencing memo that the
23 government has provided, as well as the supplementing
24 documents. However, I just wanted to make it clear on this
25 record that the government would be recommending the maximum

1 sentence for the defendant in this case. And specifically,
2 the government would be asking for life on Counts One
3 through -- One through Five and a maximum of 20 years on
4 Count Number Seven.

5 The government understands, Your Honor, that there
6 is a mandatory minimum count as it relates to the VICAR
7 murder counts. The other counts carry a maximum of life. We
8 ask that life sentences be imposed on each one of those
9 counts.

10 And the government makes this recommendation
11 because the government believes that, based on the facts of
12 this case, it's an appropriate sentence in this matter. And
13 also, a maximum sentence on each one of these counts
14 satisfies the requirements or the mandates that are outlined
15 in the 3553(a) factors that we know that the Court must
16 consider when fashioning an appropriate sentence.

17 With that said, Your Honor, I would like to just
18 go through a couple of highlights from the sentencing
19 memorandum to justify why we've made this recommendation and
20 then I'll step down, Your Honor.

21 THE COURT: All right. Go ahead.

22 MR. COLLINS: Thank you, Your Honor.

23 Your Honor, when you think about the nature and
24 circumstances of the offense in which this defendant is
25 convicted of, I think -- one of the first lines in our

1 sentencing memo is that this defendant has now been convicted
2 of some of the most serious crimes that a person could have
3 committed.

4 And during -- during the trial, the government
5 presented evidence, Your Honor, that showed that the
6 defendant was a part of this national criminal organization,
7 the Gangster Disciples. But not only just a regular member,
8 Your Honor. He was a stalwart member of this organization,
9 somebody who went to extreme measures for this organization,
10 somebody who held positions of authority, positions of
11 authority that specifically centered around violence, and
12 that he carried out violent acts on behalf of the
13 organization's beliefs and its goals.

14 And, as the Court has heard through the testimony
15 that's been presented in this case -- and actually multiple
16 hearings -- this was an organization that was very
17 intentional about creating this -- this atmosphere of fear
18 and of dominance through various violent crimes -- the
19 assaults, the robberies, the attempted murders, the
20 shootings, and murders.

21 And the one person, Your Honor, who carried out
22 the most serious of these crimes was the defendant. And the
23 government -- the government illustrated this, of course,
24 through -- through the crimes that the Court has already
25 heard about, the violent smashings of gang members that the

1 defendant routinely participated in. You've heard about that
2 clearly through the murders of Derek Sherden and Amanda
3 Weyand.

4 Derek Sherden, who was supposed to be an associate
5 of the defendant, someone that he killed over a \$60 marijuana
6 debt. Amanda Sherden [sic], who was an innocent victim who
7 literally was just in the wrong place at the wrong time.

8 The planned -- the planned and executed shooting
9 of the McGougan residence in retaliation with the Bloods. A
10 shooting that took place while this house was occupied by
11 various relatives of the McGougans and individuals on the
12 street.

13 And, of course, the unprovoked assault of Malcolm
14 Wright, an assault that led to the events which resulted in
15 Mr. Wright's death.

16 It's through these acts, Your Honor, that -- and
17 the other things that the defendant was involved in that the
18 government believes that this defendant embodied the
19 depravity of this organization, the impact that it had on the
20 community.

21 But it was also through this embodiment, Your
22 Honor -- and the government believes this is very important
23 when the government -- when the Court fashions a sentence --
24 it's also through this embodiment of this organization that
25 the defendant then empowered the organization and its

1 members.

2 And the Court has heard from several witnesses.
3 You've heard from Mr. Dowlen, Mr. Trotter, Mr. Warfield, and
4 even some of the civilians who were familiar with the
5 Gangster Disciples, that this was an organization that wanted
6 to be the biggest and baddest gang in the district. And,
7 because of that, they wanted individuals who were big and
8 bad, too.

9 And you've heard it multiple times. The person
10 that was considered to be the biggest and the baddest was the
11 defendant. The person that was considered to be the boldest
12 and -- and the most fearless was the defendant. And the
13 defendant was that person who the Gangster Disciples
14 recognized would willingly take part in violent activities on
15 behalf of the gang.

16 And, when he would do it, they would also join in.
17 They felt stronger by having someone like the defendant who
18 was involved in their organization. And, because of that, it
19 empowered them and encouraged them to take part in this reign
20 of terror with impunity that you heard about throughout the
21 case.

22 And so, when fashioning the sentence, Your Honor,
23 and why we think a maximum sentence is appropriate, we ask
24 that the Court weigh specifically the defendant's conduct,
25 but also the impact, the embodiment, the empowerment that he

1 gave this organization in order to carry out his criminal
2 activities throughout the district.

3 THE COURT: So, just to make sure I understand,
4 you said in the beginning One through Five.

5 MR. COLLINS: Count --

6 THE COURT: Right. But then Five and Three are
7 consecutive.

8 MR. COLLINS: That is correct, Your Honor.

9 THE COURT: Okay.

10 MR. COLLINS: That is correct.

11 THE COURT: So what's your recommendation? Five
12 and Three have to run consecutive to any other term.

13 MR. COLLINS: That's correct, Your Honor, and we
14 would ask the Court run consecutive -- we would ask that the
15 Court do life sentences on Counts One, Two, Four.

16 THE COURT: Oh, there you go. Keep going.

17 MR. COLLINS: Okay.

18 THE COURT: And then what's your recommendation on
19 Three and Five?

20 MR. COLLINS: And, Your Honor, based on the
21 Court's finding, we would ask that those counts run
22 consecutive.

23 Those also carry a maximum of life, and I would
24 like to address, Your Honor, why -- why I believe they should
25 be consecutive as well. I was going to do that later on --

1 THE COURT: All right.

2 MR. COLLINS: -- in the presentation, if that's
3 okay with the Court.

4 THE COURT: We're there now. I'm going to hear
5 from Mr. Evans, Mr. Hardison if he wants to talk, and I'm
6 ready to impose sentence.

7 MR. COLLINS: Sure, Your Honor.

8 Well, look, Your Honor, clearly the defendant --
9 I've looked at the PSR. The defendant has, you know, what
10 the government believes is a serious criminal background,
11 based on convictions as well as contacts.

12 While the PSR I believe is instructive, I think
13 what's more instructive, Your Honor, are the comments that
14 you heard from the people during the course of the trial who
15 interacted with the defendant on a day-to-day basis. These
16 were individuals who talked about his incessant need to be
17 involved in violence; that he wanted to be known for either
18 rapping or murder; that he actively sought out opportunities
19 to be involved in violent conflict.

20 You heard from Mr. Duffey about how the
21 defendant -- you know, he wanted to pull the rats out to
22 test -- so that they could face violent consequences; that he
23 had the bullet on his face so that people would know -- these
24 are all things, Your Honor, that the government believes are
25 consistent -- well, they -- they're consistent with the

1 defendant's need to be involved in violent activities.

2 And the government believes, Your Honor, that, you
3 know, when you look at this case, there is absolutely no
4 remorse from this defendant. Zero. And, in actuality, this
5 is the defendant who so embraced this violent culture --

6 THE COURT: Yeah, I get all that. I agree with
7 all that. I mean, you speak from the record.

8 So you're suggesting a life sentence on Count One,
9 Two, and Four, and then two more consecutive life sentences?

10 MR. COLLINS: That's correct, Your Honor.

11 THE COURT: Okay. And then 20 years on Five --
12 Seven?

13 MR. COLLINS: That's correct, Your Honor.

14 THE COURT: Okay.

15 MR. COLLINS: And, look, Your Honor -- this is the
16 last thing I'll say. And I was going to talk about the
17 course and goals of sentencing or objectives of sentencing.

18 Your Honor, based on the evidence in this case,
19 the defendant and the Gangster Disciples were very, very
20 intentional about the message that they sent out to the
21 community, how they wanted to be the biggest and the baddest.
22 The defendant in all of his actions was very, very
23 intentional. He wanted people to fear him, and that's why he
24 acted in certain ways. He wanted people to know that Derek
25 Sherden and Amanda Weyand were executed --

1 THE COURT: I know you speak from the record, and
2 you do it well. We all recognize, in the federal system,
3 life is life.

4 MR. COLLINS: I got that, Your Honor.

5 My point is, Your Honor -- my point is, I think
6 that this Court should be as intentional as the defendant and
7 the Gangster Disciples were in their activities and fashion a
8 sentence that not only punishes this defendant but shows the
9 public that this type of activity will not be accepted, this
10 type of conduct is not accepted, and consecutive life
11 sentences will send that type of message.

12 THE COURT: Okay.

13 MR. COLLINS: And that's the point I was trying to
14 make, Your Honor.

15 THE COURT: I understand.

16 MR. COLLINS: It captures a -- a general
17 deterrence. Hopefully, look, it will specifically deter the
18 defendant or not -- or not -- but we think general deterrence
19 is very important in this case based on the fact that you've
20 heard, like I said, testimony that people lionized this
21 defendant. Young men who were violent members of the gang,
22 young men who weren't. They followed him. And we believe
23 that this type of sentence is necessary to generally deter
24 the public, promote respect for the law, as well as, Your
25 Honor, to provide adequate punishment for the defendant.

1 THE COURT: All right.

2 Mr. Evans.

3 MR. COLLINS: Thank you, Your Honor.

4 MR. EVANS: So, Your Honor, in response to the
5 government's statements -- and I didn't glean from their
6 sentencing position that they were asking for multiple
7 consecutive life sentences.

8 THE COURT: Well, you understand now.

9 MR. EVANS: I do know now. And the government
10 asked you to be -- I think he said as intentional as the
11 defendant in rendering a sentence.

12 Well, Your Honor has to be obviously always
13 intentional in his eyes, but he -- but you're also tempered
14 in your acts by statute and consideration of statute. And
15 consideration of more than just the -- the offense
16 characteristics and the nature and the circumstances of the
17 offense.

18 3553(a) is what instructs the Court in this
19 instance on how to fashion the appropriate sentence. There's
20 no question that the -- the loss of life in this case is
21 significant. But this Court has to consider more than just
22 that when considering a sentence. And I'd ask the Court when
23 considering what sentence to levy in this case to walk
24 through some of those factors. I know the Court will and
25 always does. But I just want to talk about a few of them

1 briefly for the Court, just to highlight them.

2 Deterrence: Brandon Hardison, by virtue of the
3 statutory required sentence for Counts Two and Four, will
4 never walk out of prison. Ever. He will die there. Life
5 means life in the federal system, as Your Honor just noted.

6 Your Honor's also indicated by virtue of the
7 ruling today that it's going to be life plus at least 20
8 years, that those counts, Three and Five, will be
9 consecutive. And, while Mr. Hardison takes issue with the
10 consecutive nature of even those sentences, the question is
11 what -- what goals of sentencing does it further to sentence
12 him beyond his natural life? And the short answer is none.
13 It doesn't make a greater deterrent to give him a sentence
14 that he can't serve. It doesn't deter others' acts to give a
15 sentence that he can't serve. It's nonsensical to sentence
16 someone beyond their natural life and say that that for some
17 reason has the effect of deterring future behavior of others
18 or that specific defendant.

19 And, respectfully, to the Court, I disagree with
20 the -- with the government here. Your job here today, Your
21 Honor, is not to send a message beyond that that is embodied
22 in the 3553(a) factors. A life sentence plus 20 years as --
23 which is the minimum sentence for Counts Three and Five, and
24 which would be the sentence based on Your Honor's ruling
25 today, is a significant sentence. It promotes respect for

1 the law. It's his life. It's his entire -- the entire rest
2 of his life where he will not be free. It's a just
3 punishment.

4 And just very briefly about Mr. Hardison. And I
5 know this is in the sentencing filing. But Your Honor has to
6 consider his history and characteristics as well. And I
7 think it's important to note where Mr. Hardison came from and
8 a little bit about what he endured.

9 And I know this can be somewhat of a -- a
10 difficult thing to talk about in light of all the pain that
11 was just shared by others. But the Court has to consider it.
12 And I know the Court knows that. But Mr. Hardison, as I note
13 in the sentencing papers, within weeks of coming into this
14 world, was severely abused, likely by his father, and taken
15 away from his parents and had to go live with his -- excuse
16 me -- paternal grandparents. And he was deprived any
17 meaningful male role model when he was a child.

18 From all accounts, it looks as though Mr. Hardison
19 was back with his mother and father at times, even though
20 there was a court order from juvenile court saying that they
21 shouldn't have been. When looking through the DCS records in
22 this matter and doing the mitigation investigation, there was
23 several indications that Mr. Hardison, although he was
24 ordered not to be back around his parents unsupervised, was
25 allowed back around them unsupervised, including his father.

1 His father, according to DCS records, refused to
2 take any meaningful step to be a part of his life. He
3 refused to take the parenting classes -- just parenting
4 classes -- that were necessary to get back in Mr. Hardison's
5 life as a child. And, by all accounts, Mr. Hardison's father
6 suffered from his own demons, including drug addiction, for
7 which young Brandon was subjected to.

8 That affects someone's life trajectory. The
9 social science is strong on that. It affects life trajectory
10 in a meaningful way. And when the government talks about
11 gangs, the one part that gets missed in the position of the
12 government when they talk about gang and gang violence and
13 people who join gangs is the why. Is what's missing in that
14 community that would allow someone to be charmed into gang
15 life, to be conscripted into gang life. What's missing
16 there? Is it the -- is it the meaningful male role model?
17 What is it? Are they replacing that with someone in the
18 community that's part of that gang? Are they idolizing the
19 wrong person?

20 But there's a significant institutional failure
21 that leads to that lifestyle. And that can't be missed in a
22 gang case like this when the Court's considering these
23 issues.

24 Lastly, Mr. Hardison has got significant mental
25 health issues and has for a long time, including psychosis.

1 He's a cutter. He's -- he has engaged in self-harm on
2 multiple occasions throughout his life, both while
3 institutionalized and out. And he has sought help on other
4 occasions as well.

5 And, unfortunately for Mr. Hardison, it appears
6 that one of the brief times in his life where he was properly
7 medicated was when he was in TDOC, and then was released from
8 TDOC and lost access to that medication. And as the -- as
9 we've noted -- or as the PSR notes, he did not have
10 meaningful access to medical treatment. And that no doubt
11 had an effect on his decision-making throughout his life, his
12 ability to interact and have meaningful relationships with
13 others and in how he viewed the world and how he interacted
14 in that world. And that's a significant thing for this Court
15 to determine when the Court is determining what sentence to
16 hand down.

17 And I would like to let the Court know that
18 Mr. Hardison's mother and his fiancée are both here today in
19 support of him. Well, his fiancée left. She was there, but
20 that's Ms. Pam Hardison. I think she's in the hallway.
21 But --

22 THE COURT: Okay.

23 MR. EVANS: Ms. Jakwila Fitz [phonetic] is her
24 name. And his cousin is also here in support of him today.

25 He has family that loves him. He has children.

1 He's a good father. He's trying to be a good father from the
2 place of incarceration and still meaningful- -- meaningfully
3 interacts in those children's lives on a daily basis.

4 So, Your Honor, when you render sentence for
5 Mr. Hardison today, we would ask you not to consecutively
6 hand out life sentences. We believe the only sentence that
7 would be appropriate based on the confines of the law would
8 be a life sentence plus 20 years, based on Your Honor's
9 ruling. And that's the sentence we would ask you to hand
10 down.

11 THE COURT: All right.

12 MR. EVANS: And, Your Honor, we've asked for a --
13 for certain recommendations in our papers. I can go back
14 over them, what we would like the Court to recommend.

15 THE COURT: Okay.

16 MR. EVANS: Amend those --

17 THE COURT: Do you want to address those now?

18 MR. EVANS: Yeah, I can. Yes, Your Honor.

19 We've asked the Court to include in
20 recommendations that he be housed as close as possible to
21 Nashville, Tennessee.

22 THE COURT: Sure.

23 MR. EVANS: That the Court recommend him to
24 participate in mental health treatment.

25 THE COURT: Sure.

1 MR. EVANS: Drug treatment. And any available
2 educational program that --

3 THE COURT: Certainly.

4 MR. EVANS: -- that the institutions would have.

5 THE COURT: Okay.

6 MR. EVANS: And, Your Honor, we don't believe a
7 fine in this case would be appropriate because he's
8 financially unable.

9 Thank you, Your Honor.

10 THE COURT: Does Mr. Hardison want to speak?

11 MR. EVANS: He does not, Your Honor.

12 THE COURT: Okay. Anything else? From the
13 government?

14 MR. COLLINS: No, Your Honor. Thank you.

15 THE COURT: Mr. Luke -- I mean, Evans, Bruno?

16 MR. EVANS: Your Honor, the only other issue I
17 would make a request of the Court at the conclusion of the
18 hearing as it relates to Mr. Hardison's family.

19 THE COURT: Does he want a minute with his mother?

20 MR. EVANS: Yes, Your Honor.

21 THE COURT: That will be arranged through the
22 marshals.

23 All right. So the Court's ready to impose the
24 sentence.

25 You know, the cardinal rule here, the statutory

1 rule, is to impose a sentence that's sufficient but not
2 greater than necessary to accomplish the purposes of the
3 sentencing laws. And I can't remember where I read it, but
4 when I did do a little research -- I do think it was Justice
5 Gorsuch, but I may be wrong -- what does that mean? And in a
6 nutshell I think he said that means the Court's not supposed
7 to impose a sentence that is harsh, but sufficient to
8 accomplish the purposes of the sentencing laws. And that's
9 what I -- my sentence intends to do.

10 So Mr. Hardison, all of the 3553 factors here:
11 The seriousness of the offenses, plural, of conviction, the
12 multiple murders in -- particularly, as well as the other
13 activity of violence, and drug activity, all perpetrated
14 through this conspiracy with the Gangster Disciples, merits a
15 severe sentence. And the guideline I think does try to
16 capture that on the issue -- the sentence also
17 accomplishes -- I think my sentence also accomplishes the
18 need of punishment. I think we heard some of that from the
19 victims. But also the law demands punishment for what you
20 have done and what the jury has found you guilty of doing.

21 Yes, there is a message of general deterrence.
22 And the Court has no doubt that this sentence will send that
23 message. And specific deterrence here, quite frankly, given
24 especially Counts Two and Four that impose the mandatory life
25 speaks for itself, to the extent that's accomplished. It's

1 really more of an issue of general deterrence.

2 My sentence will also send a message of respect
3 for the law and respect for other human lives that have been
4 affected here in a manner that can never be changed.

5 So for all of the reasons under 3553(a) and having
6 considered the guidelines, my sentence is as follows:

7 On Count Two that addresses the murder of Derek
8 Sherden, I impose the mandatory life sentence.

9 On Count Four that addresses the murder of Amanda
10 Weyand, I impose the mandatory life sentence.

11 On Count -- on Count One, which is the conspiracy
12 to participate in racketeering activity, which the Court --
13 and I want the record to reflect, includes multiple predicate
14 overt acts: Firearms, assaults, drug-related action, as well
15 as the murders that I've already referenced, and other overt
16 acts of criminal behavior captured in there, the Court
17 believes and imposes on Count One a sentence of life.
18 Although in Count One, Two, and Three, those life sentences
19 run concurrent.

20 On Count Seven, has a maximum term of 20 years. I
21 will impose the 20-year sentence, also to run concurrent.

22 However, Counts Three and Counts Five have
23 consecutive sentences. And I've heard the government's
24 argument about a consecutive life sentence. And with all due
25 respect, the Court doesn't -- the Court believes that would

1 be harsh and defy laws of physics and life as we know it.
2 Mr. Hardison has but one life. All of us have one life. And
3 I have captured that in the murders that I've already
4 rendered here. I just think it would -- it would -- it would
5 be harsh to impose another life sentence because it
6 practically cannot be served. It practically cannot be
7 served. And the only reason to do that is vengeance and
8 revenge and harshness. And there's no place for such
9 emotions in a court of law. So I'm going to impose a
10 consecutive sentence on Count Three of ten years, which again
11 will never be served, because life means life in the federal
12 system, and then a consecutive sentence in Count Five of ten
13 years.

14 Again, Mr. Hardison will never -- will never get
15 to those because Counts One, Counts Two, and Counts Four that
16 addresses the multiple murders that he -- the jury's found
17 here, he's received a sentence of life. And in the federal
18 system life is life, no ifs, no ands or buts.

19 I'll impose a lifetime supervised release. I will
20 not impose a fine. I do have to impose the mandatory special
21 assessment, \$100 per count, for the six counts, Counts One,
22 Two, Three, Four, Five and Seven, for a total of \$600.

23 I will accept all the recommended special requests
24 from Mr. Hardison's -- and his attorneys for -- to recommend
25 to the Bureau of Prisons.

1 All right. Does the government have any
2 objections to the sentence?

3 MR. COLLINS: No, Your Honor. Thank you.

4 THE COURT: I'm sorry?

5 MR. COLLINS: I said no, Your Honor.

6 THE COURT: All right. Mr. Evans? Mr. Bruno?

7 MR. EVANS: Yes, Your Honor.

8 THE COURT: Okay. I think I've said all that's
9 appropriate here. It sort of speaks -- the offenses of
10 conviction speak for itself. And this Court really can add
11 nothing more to that.

12 I do thank those who took time to come and express
13 their feelings to the Court. And that's important to the
14 process. And I do ask the marshals to give, under
15 appropriate security -- mother or girlfriend? That's the
16 girlfriend?

17 MR. EVANS: No. Your Honor. That's Ms. Pam
18 Hardison. That's his mother.

19 THE COURT: Oh, okay. The mother then.

20 All right. Thank you.

21 (Court adjourned.)
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23
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25

1 REPORTER'S CERTIFICATE

2
3 I, Lise S. Matthews, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Tennessee, with offices at Nashville, do hereby certify:

6 That I reported on the Stenograph machine the
7 proceedings held in open court on December 7, 2022, in the
8 matter of UNITED STATES OF AMERICA v. BRANDON DURELL
9 HARDISON, Case No. 3:17-cr-00124-3; that said proceedings in
10 connection with the hearing were reduced to typewritten form
11 by me; and that the foregoing transcript (pages 1 through 58)
12 is a true and accurate record of said proceedings.

13 This the 24th day of January, 2023.

14
15 /s/ Lise S. Matthews
16 LISE S. MATTHEWS, RMR, CRR, CRC
17 Official Court Reporter
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